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**IN THE SUPREME COURT  
OF THE UNITED STATES**

**October Term, 1978**

No. 78-1121

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HARLAN E. ORR,  
*Petitioner,*

v.

THE ARGUS-PRESS COMPANY,  
*Respondent.*

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**BRIEF OF RESPONDENT IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT  
OF APPEALS FOR THE SIXTH CIRCUIT**

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### QUESTIONS PRESENTED

1. Whether the petitioner, Harlan E. Orr, was a public figure in the context of the newspaper article reporting his arrest and criminal indictment for violation of the Michigan securities fraud statute in the development of a proposed shopping mall.

2. Whether the respondent, The Argus-Press Company, under the constitutional privilege afforded by the First Amendment in the publication of the newspaper article under the circumstances acted in reckless disregard of the truth of the statements contained in the article.

### CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution provides, in relevant part:

"Congress shall make no law . . . abridging the freedom . . . of the press; . . ."

The privileges afforded to citizens of the United States were protected from state action by the following provision in the Fourteenth Amendment to the Constitution:

" . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: . . ."

In this diversity case, petitioner sought to enforce under Michigan law a libel action for damages.

### STATEMENT OF THE CASE

Respondent finds certain inaccuracies and omissions in the statement of petitioner.

Petitioner in his efforts to develop the proposed shopping mall to be known as the Chippewa Mall sought the assistance of the local Chamber of Commerce (1a). Orr requested and obtained assistance and cooperation of local governmental agencies relative to zoning, annexation and the extension of utilities to the proposed shopping mall (1a). A written prospectus was prepared to be utilized in the solicitation of financing the project from local investors (3a, P. Ex. 38). Petitioner through his associate obtained a front page news release concerning the initial announcement of the proposed mall development (11a, D. Ex. 61). Petitioner sought to raise the sum of \$250,000 from local investors to purchase the land site for the proposed mall (4a). More than thirty-seven local people were directly

solicited by the petitioner and his associates (16a). Petitioner had prior history of unlawful conduct with respect to the Michigan securities fraud law (8a, D. Ex. 59).

The reporter assigned to cover the story for respondent examined the District Court file, interviewed the arresting officer, Herbert W. Runyan, reviewed the prior Associated Press story released and heard the local radio report of the matter concerning the arrest of the petitioner. Following the arraignment on November 20, 1973, the reporter talked by phone with the District Court concerning what occurred just prior to press time. The reporter destroyed his notes on the story at the time he terminated his employment with respondent (13a).

The petitioner does not deny that the underlying facts contained in the newspaper article were true and accurate. Orr claimed that the characterization of the incident in the headline and newspaper article were slanderous, by the employing of the terms *fraud*, *phony* shopping mall *scheme* and alleged *swindle* to the criminal charges. The face sheet of the District Court criminal file employed the term *fraud* in describing the charge (34a, P. Ex. 66).

Respondent through its attorney sought to have Orr approve the content of a retraction which petitioner did not do and therefore no retraction was published (8a).

There is no evidence in the record to show ill will, spite or malice on the part of the respondent or its employees concerning the petitioner and his associate, Merlin Goodrich (9a).

The story dispatched over the Michigan newspaper wire by the Associated Press before the newspaper article was clearly more defamatory of the character of the petitioner and did not contain the underlying facts truthfully reported in the newspaper of respondent (35a, D. Ex. 69).

### ARGUMENT

#### 1. THE DEVELOPER OF A PROPOSED SHOPPING MALL WHO SEEKS LOCAL GOVERNMENT AND PUBLIC SUPPORT FOR THE PROJECT IS A PUBLIC FIGURE WHEN SUBSEQUENTLY CHARGED WITH CRIMINAL ACTIVITY IN PROMOTING SUCH DEVELOPMENT

The court of appeals correctly ruled that the petitioner, Harlan E. Orr, was a "public figure" as that term has been constitutionally defined in *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967) and *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974). This Court in the *Gertz* case defined public figures,

"Those classed as public figures stand in a similar position. Hypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare. For the most part those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment."

Orr by his own conduct placed himself at the center of a public attention in the community where the proposed shopping mall was to be developed. Through his business associate, petitioner obtained local publicity from the respondent in a front page story announcing the project. Orr sought and obtained the cooperation and assistance of local governmental agencies relative to zoning, annexation and exten-

sion of utilities to the proposed site. Petitioner sought financial support for the project from local investors.

The alleged libelous statements were contained in a newspaper article reporting the arrest of the petitioner and his associate. The criminal charges arose because Orr and his associates attempted to obtain local investors through illegal sale of securities, misrepresentation and failure to disclose material facts concerning the development. Petitioner previously had involved himself in a similar controversy concerning the securities fraud law in promoting a mall development in another locality in Michigan. Orr through his own conduct became a public figure in the controversy over the development of the proposed mall in the small community. Petitioner previously demonstrated accessibility to the media in his initial announcement of the mall published in the newspaper of the respondent. Within this factual setting, petitioner was clearly a public figure.

Under the legal principles developed in the *Curtis Publishing Co.* case, it is incumbent upon the court of appeals to determine if the libel charged concerns a "public figure". In the instant case, the court of appeals properly exercised its constitutional duty and determined Orr to be a public figure. Such determination is fully consonant with the recent decision of *Wolston v. Readers Digest Association, Inc.*, 578 F.2d 427 (D.C. Cir. 1978). The factual setting of the case at bar is very similar to *Greenbelt Cooperative Publishing Association v. Bresler*, 398 U.S. 6 (1970). In the *Greenbelt* case, the Supreme Court had no difficulty concluding that Bresler was a public figure.

The petitioner has not cited any issue considered and decided by the court of appeals which involves a federal question which has not been settled by the prior opinions of the Supreme Court. *Time Inc. v. Firestone*, 424 U.S. 448 (1976) is clearly distinguishable on its facts from the case at bar. Mrs. Firestone was a private citizen seeking the dissolution of her marriage. Public interest in a matter is not



equivalent to public controversy. There was nothing in the publicity of the Firestone divorce proceedings which affected the rights of others. In contrast, the publicity of the Orr criminal indictment apprised the public in the Owosso-Corunna community of the possible risk or harm that could occur to any one solicited as a possible investor in the project. This was the very purpose for the enactment of the Michigan securities law.

2. THE RECORD DOES NOT SUPPORT ANY INFERENCE OR FINDING THAT THE NEWSPAPER DOUBTED THE ACCURACY OR RELIABILITY OF ITS SOURCES AND DEMONSTRATED AN ATTITUDE OF RECKLESS DISREGARD FOR THE TRUTH OF THE STATEMENTS IN THE ARTICLE

Petitioner does not claim and cannot show that the decision of the court of appeals departed from the accepted legal principles of the doctrine developed in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). Petitioner concedes that the constitutional privilege of the *New York Times Co.* case is applicable to the instant case. The court of appeals exercised its constitutional duty in reviewing the record to determine if there was sufficient evidence to overcome the subjective malice standard required by the First Amendment. *St. Amant v. Thompson*, 390 U.S. 727, (1968) and the *Gertz* case mandate such a review. The appellate court did not find any evidence to support a finding of reckless disregard for accuracy. The reporter and the newspaper believed the article to be true and had nothing upon which to entertain serious doubts as to its accuracy. *St. Amant v. Thompson, supra*.

The conduct of the agents of the newspaper following publication as established by the record did not prove lack of good faith in the publication. The court of appeals reviewed all the conduct and actions of the agents of the newspaper.

The conduct of the agents of the newspaper following publication as established by the record did not prove lack of good faith in the publication. The court of appeals reviewed all the conduct and actions of the agents of the newspaper. There is nothing in the record to indicate that the conduct of the agents was any different prior to, at the time of, or after publication of the article. There is no necessity to determine or attach special significance to the actions of the agents after the publication of the article because their actions remained consistent. The same issue was raised in *Hutchinson v. Proxmire*, 579 F.2d 1027 (7th Cir. 1978).

Counsel for the petitioner concedes that the respondent was entitled to the common law qualified privilege in Michigan as defined in *Lawrence v. Fox*, 357 Mich. 134 (1959). The respondent is entitled to a presumption of good faith which must be overcome by evidence of improper motive or reckless disregard for truth or accuracy. Mere negligence on the part of the newspaper is not sufficient to establish malice. *Peisner v. Detroit Free Press, Inc.*, 82 Mich. App. 153 (1978), does not alter this doctrine. The court of appeals upon review of the record found insufficient evidence to overcome this qualified privilege. In its judgment, respondent was entitled to summary judgment at the close of all proofs. There is no indication that the local law applied in this diversity case was not in accordance with the accepted principles developed under Michigan law.

Finally petitioner poses the issue of accuracy in reporting of judicial and public proceedings. Under the holding in *Time, Inc. v. Pape*, 401 U.S. 279 (1971), any rational interpretation of an ambiguous public proceeding or report is protected by the First and Fourteenth Amendment from actionable libel for inaccuracy. The *Firestone* case also involved interpretation of an ambiguous public documents. However, the plaintiff in the *Firestone* case was not determined to be a public figure and therefore the publisher did not have the benefit of the subjective malice standard required by the *New York Times* privilege.

This court on January 8, 1979, granted certiorari in *Wolston v. Reader's Digest Association, Inc.*, supra, and *Hutchinson v. Proxmire*, supra, to review the constitutional definition of "public figure" in the light of the *Firestone* decision. Both the *Wolston* case and the *Hutchinson* case pose questions beyond the scope of the decision in the instant case, that is, the effect of the passage of time and the involuntary presence in the matter of public concern.

### CONCLUSION

Petitioner has failed to establish special and important reasons for this Court in its sound judicial discretion to grant the petition. No conflict with settled law or significant federal question is raised by the decision of the court of appeals. Respondent requests that the petition be denied.

Respectfully submitted,

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February 7, 1979

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*Testimony of Harlan E. Orr*

## TESTIMONY OF HARLAN E. ORR

Q. (By Mr. Kobza): All right. We will concentrate on the Owosso one right now. As a description, keep that in mind. Mr. Orr, when did you first, and under what circumstances did you first become interested in Owosso as a potential project?

A. In the Fall of 1972.

Q. How did that come about?

A. Mr. Goodrich in our office was telling me that he formerly lived in Owosso, that his father lived over there and that he had been over there visiting him and he felt that Owosso would be a good spot for developing one. He had one or two inquiries concerning locations over in that area from some of his proposed tenants.

Q. All right. That is while he was working for the J.M.H. as a leasing agent?

A. Right, right.

Q. All right. What did you do, then?

A. We went, he and I made a trip to Owosso in the early Fall and prior to this time I think I contacted, I told him to get whatever he could get. He contacted the Chamber of Commerce in Owosso and got all the information that they had on the city and the economics of the area. Then, we made a personal visit over there, a sort of an inventory of the retail outfits that were existing there and then following that, we approached a real estate firm in Owosso so we could get a lay of the land around the area, the land that might be available and what utilities were there.

Q. All right. Were there any site problems that required your attention in regards to zoning or utilities?

A. These properties that we were, that we finally got the options on was along toward the end of June when we got all five of them signed up.

Q. Part of it had to be resigned?

A. Yes. Part of it was outside the corporate limit of Corunna and/or in the Township of Shiawasee, so they had



to be annexed, part of that into Corunna and then we had the city water and sewage problem to work out with the City of Corunna. They hadn't done very much of expansion of their little plant which they were not going to do any expansion of that little plant pending a promotional deal with the Federal Government to take about three of the four of the townships into one unit and build one big combined sewage system for the whole area, but they finally, with our engineers and the city engineers concluded that temporarily, at least, we could get into that small disposal plant they had but we would have to pay the expenses of residential connections all the way and it was projected by the engineers. That run from Ann Arbor, which was a city area for Corunna and our engineers, they came up with the costs of about between \$75,000 and \$100,000, and we agreed for by that time we had gotten the land and we agreed with the City we would pay that. We would have the City water and sewers run out there from the municipality of Corunna.

Q. Did you, yourself, ever meet with the City officials of Corunna?

A. Yes, oh, yes. We had three or four meetings, evening meetings and daytime meetings with their engineers and with their City Manager until they finally concluded a way to build that thing in their bailiwick.

Q. And you say the conclusion of this agreement was that your, that the development company would stand the cost?

A. Yes, we would stand that cost.

Q. Who handled the zoning matter, the zoning and the annexation problems?

A. The City Attorney who I later learned was Mr. Kelly of Corunna in the City and he felt that annexation, he would, of course, handle that, and he had his paperwork and eye for it and would be ready to go on that by the time we completed in the early Fall, early September.

MR. KOBZA: I offer Exhibit 38.

THE COURT: Any objection?

MR. DES JARDINS: We have no objection.

THE COURT: The Court will admit Plaintiff's Proposed Exhibit 38.

Q. (By Mr. Kobza): All right. Mr. Orr, I'm not going to request that you read this entire proposal, but as we come to the page which is entitled "Chippewa Mall, Owosso, Michigan, project" in the middle of the page, is the set of figures entitled "Costs", will you relate what that detail is and what it is the cost of and then read it verbatim?

A. The cost of construction was projected.

Q. Of what?

A. Of the building of the mall, building 202,000 square feet, \$3,500,000 on the basis of \$12 a foot. Parking lot 2,500 covering 26 acres was at \$5,000 an acre was projected \$130,000. The architects fees, 6 percent was \$210,000. The mortgage fee of 2 percent was \$100,000. The land cost \$690,000. The developer fees or profit which we were to receive 6 percent \$270,000 and we had a contingency fund of \$100,000. We were looking for a mortgage of \$5,000,000, 100 percent financing based upon the leases.

Q. All right. Now, who is the "we" that was to receive the development fee of \$270,000?

A. The J.M.H. Development Company.

Q. All right. And how did — on what basis did you set forth in there land costs of \$600,000? The purchase price of these five pieces reflected in the previous exhibits was \$440,000.

A. For the five pieces and the cost of all the improvement and development is set out in this Exhibit here as \$250,000. Now, the \$250,000 the cost of developing the land and improving it was added to the cost of the land making it \$690,000 as the value of the land after the improvements were all done and all the development is finished somewhere here—

Q. All right. Are these other fees or costs and fees estimates or did you have any other basis for determining the accuracy of the amounts?

*Testimony of Harlan E. Orr*

A. Well, the architect fee is pretty well standard. Our architect was doing them all for 6 percent, so we deducted 7 percent. The mortgage is either 1 or 2 percent, in some cases 2 and in some cases only 1. A developer's fee is included by all of the mortgage companies as a profit factor for the developer running 6 and 7 percent. Several of them allow in their financing figures 7 percent as a reasonable profit for the developer. We figured 6 percent on this one in Owosso.

Q. All right. What is the page "predevelopment"? What does that page set forth?

A. These are projections that our office made of the predevelopment costs that could be reasonably anticipated prior to actual start of the construction of the building.

Q. And what is the total on that page?

A. The total is \$250,000.

Q. And is that the same \$250,000 that you were talking about with regard to increase over cost of the land?

A. That is the same \$250,000.

Q. Would you detail what is included in the \$250,000?

A. Miscellaneous office expense, telephone, postage and legal on the leasing about twenty-four months work, expenses of the new corporation; feasibility and mortgage application expenses, topo-survey-soil tests; living expenses for two men on the road for the next two years; the zoning and expenses for architects and engineering work for the next two-year period and travel expenses; the land clearing and the installation of the utilities \$250,000.

Q. And now, does this \$250,000 relay in any way to the solicitation of the local investors?

A. It does.

Q. In what way?

A. That is the capitalization to be made, the capitalization of the Chippewa Land Company which was to be owned by the local people.

Q. And how much money did you expect to obtain from the local investors?

A. \$250,000.

*Testimony of Harlan E. Orr*

Q. If you obtained that amount of money, how would it be spent?

A. It would be spent from the program here, predevelopment costs.

Q. It would be applied to the costs as estimated here, is that correct?

A. That is correct.

Q. All right. Did the Michigan Department of Commerce undertake an investigation of you and J.M.H. Development Corporation in connection with this Snowflake Mall?

A. They did of J.M.H. Development but not me.

Q. What you testified on direct examination—strike that. I will withdraw the question. Mr. Orr, when did that investigation commence?

A. Well, the latter part of '71 or '72 and it was after, reported after the formation of Snowflake Mall and after we were in business and acquired the land and had gone ahead; sometime after that.

Q. Are you sure that the proceedings were directed only against J.M.H. Development Corporation?

A. That is my understanding. That is the way I recollect it.

Q. Mr. Orr, I am going to show you Defendant's Proposed Exhibit 59 and ask you to read the entitlement of that Exhibit.

MR. KOBZA: Read the what?

MR. DES JARDINS: The entitlement.

A. "In the Matter of Harlan Orr and J.M.H. Development Corporation —"

MR. HILL: I didn't understand that. Can you repeat that?

A. It says "In the Matter of Harlan E. Orr and J.M.H. Development Corporation, respondents." Yes, that was October '71.

Q. I see. Income or as the result of that investigation an order was entered by the Michigan Department of Commerce, was there not?

*Testimony of Harlan E. Orr*

A. I think there was. I guess I got a copy of it; I am not sure.

Q. And that order was issued on October 22, 1971, is that right?

A. That is the date is shows there, yes.

Q. All right.

A. I think the date we got is was in December.

Q. Now, in connection with this investigation you were being investigated by the Securities Bureau of the Michigan Department of Commerce?

A. They said so. Nobody was ever around to talk to me or anything.

Q. And have you, did you read that order when you received a copy of it, Mr. Orr?

A. Yes, I even called them about it. I went to see them.

Q. And didn't they indicate to you that you had done certain things in connection with the Securities Law that was not right; that was unlawful?

A. They claimed solicitation of a group to buy real estate with a security. Our attorney advised us differently and he advised us to go to the President of the company and I myself made a date, went into the State Department and told them so and told them it happened quite a few months before that.

THE COURT: If we can, let's keep our answers responsive so that it will permit an objection if there be one and the Court can rule and we can proceed a lot more quickly.

Q. (By Mr. DesJardins): Isn't it true, did they in their investigation disclose that you and J.M.H. Development Corporation in May of 1971 in the Grand Rapids Press and in April and May of 1972 in the Muskegon Chronicle offered for sale in Michigan 5,000 units in an option contract which J.M.H. Corporation had to purchase of certain land and offered in the same newspaper 5 shares of Snowflake Shopping Mall of Muskegon, Inc., stock?

A. That is what they alleged.

*Testimony of Harlan E. Orr*

Q. All right. As a result of that investigation they issued an order against you, did they not?

A. I think that is the order—there was an order, I think. No—yes, there was an order.

Q. And that order directed you meaning Harlan Orr and J.M.H. Development Corporation, to cease and desist in engaging in the activity that they alleged in the first page of that report. Is that not true?

A. I think it says for the sale of stock.

Q. And didn't that order further provide that you and J.M.H. Development Corporation, that the exemption to offer securities without registration under certain sections of the Uniform Security Act were withdrawn from you and J.M.H. Development Corporation; is that not correct?

A. That is what was in the order, that is correct.

Q. And didn't that order further provide—I am going to read from the order so we are clear on it. It further orders pursuant to Section 402(c) of the Act that: "For reasons set forth above the exemption in clause 10 of Section 402(b) of the Act and the exemption in clause 8 of Section 402(b) of the Act are and are hereby summarily withdrawn and revoked as to respondents with respect to the above mentioned securities and any other securities of J.M.H. Development Corporation."

A. That is true.

Q. All right. Now, did this order further provide that if you did not agree with the determination that had been made by the Department in its investigation that you had an opportunity to appeal?

A. It sure did.

Q. Did you appeal?

A. We visited them, the President of the company to tell what we had done, what the picture was and it was of no force and effect, though, we weren't offering any stock or anything.

THE COURT: The Court is going to say it is not a responsive answer, Mr. Orr.



*Testimony of Harlan E. Orr*

THE WITNESS: I'm sorry.

Q. (By Mr. Des Jardins): And a result, hasn't the order remained in full force and effect from the date of its issuance, is that not correct? It wasn't dismissed.

A. No, it wasn't dismissed.

Q. And the order remained in full force and effect.

MR. DES JARDINS: I would like to move the admission of this.

THE COURT: The Court will note Plaintiff's objection and the Court will admit Defendant's Exhibit 59 at this time.

Q. (By Mr. DesJardins): And that order, Mr. Orr, was in effect against you and the J.M.H. Development Corporation at the time that you undertook the development of the Chippewa Mall project in Owosso; is that not true?

A. Again, it was not done by J.M.H. Development Corporation and/or Harlan Orr; it was done by the realtor in each case.

Q. Mr. Orr, at the time that you picked up the proposed retraction from our law office in Owosso, I think it was early January of 1974, is that right?

A. That is correct.

Q. At the time, were you given any other written document other than the proposed retraction?

A. No.

Q. You were not furnished with any proposed release, were you, at that time?

A. No, I was not.

Q. And you were requested to contact our office after you had had a chance to look at the proposed retraction, weren't you?

A. I believe I volunteered that I would.

Q. You never did contact our office again, did you?

A. No, I didn't.

Q. Now, Mr. Orr, you never had any personal contact with any of the officers or employees or agents of the Argus Press, did you?

A. No.

*Testimony of Harlan E. Orr*

Q. At any time?

A. No.

Q. Before or prior to the publication of this article or after the publication?

A. None.

Q. Did you not—but you did use the services of the newspaper prior to November 20, 1973?

A. Yes.

Q. All right. And at the time that you were developing the Chippewa Mall project, Mr. Orr, didn't you have a newspaper article published in the Owosso Argus Press?

A. There was one published.

Q. You were aware that that article was being published?

A. That an article was being published, yes.

Q. Did you prepare the article yourself?

A. No.

Q. Were your articles prepared by Mr. Goodrich?

A. I think Mr. Goodrich and Mr. Newell together.

Q. Prepared that article?

A. Yes.

Q. You knew about that?

A. I knew that one was being prepared, yes.

Q. And do you recall the date that that newspaper article was published?

A. No. It was the early part of July, I believe.

Q. Would it be correct to say that the article was published on July 9, 1973?

A. Yes.

Q. That had been identified as Plaintiff's Exhibit No. 61? Mr. Orr, I am going to show you Defendant's Proposed Exhibit 62 and ask you if that if the newspaper article that was published in the Owosso Argus Press?

MR. KOBZA: Well, we will stipulate that it was. There is no objection to that.

THE COURT: All right, the Court is going to admit Defendant's Exhibit 61.



*Testimony of Joseph Peacock*

Q. (By Mr. DesJardins): Mr. Orr, that was a newspaper article announcing the proposed development of the Chippewa Mall?

A. Yes.

Q. And it appeared on the front page of the Owosso Argus, did it not?

A. That is correct.

Q. And it was an article that was helpful to you in connection with your attempt to develop the Chippewa Mall, wasn't it?

A. Yes, yes.

Q. All right. And there were certain statements made in the article, were there not?

A. Yes.

Q. All right. Now, at the time of the article there was a sketch of the proposed mall, is there not?

A. Yes.

Q. And the same sketch that you entered into evidence here today, isn't it?

A. That is true.

**TESTIMONY OF JOSEPH PEACOCK**

Q. Mr. Peacock, have you ever personally met the plaintiff in this action, Harlan Orr?

A. No, I haven't.

Q. Did you have an occasion, Mr. Peacock, to become acquainted with his business associate, Merlin Goodrich?

A. I have met him, yes.

Q. All right. Approximately when was it that you met Merlin Goodrich?

A. Merlin Goodrich and a local realtor, Bruce Newell, came to the Argus Press office, I would say, four or five days before the article that appeared in the paper, July 9, with a proper news release about a land shopping mall that they were developing.

Q. Now, that is the first time that you met Mr. Goodrich?

*Testimony of Joseph Peacock*

A. Yes.

Q. And where did they come—

A. They came into the news room.

Q. All right. Did you talk to them at the time they came?

A. Yes, I talked to them in the news room.

Q. What did they request of you?

A. They presented me with a, what I would call a news release. It doesn't say "news release" on it: they presented me with the piece of paper with some sort of heading on it which I didn't pay much attention to. But, in the middle of the paper was a description of the Chippewa Mall.

Q. That was a typewritten page that they presented to you?

A. Yes.

Q. What did they ask of you?

A. They wanted to know whether or not the newspaper would be willing to print this news release.

Q. All right. And what was your answer to their request?

A. Well, my answer was yes, but that I had to look at it and fit it, make it fit journalistic style.

Q. Now, Mr. Peacock, I will show you Defendant's Exhibit 61 and ask you is that the newspaper release or all that appeared in the Owosso Argus Press as a result of the request by Mr. Goodrich and Mr. Newell when they came to see you?

A. Yes, it is.

Q. All right. Now, did they provide you with the information in that news release?

A. Yes, they did.

Q. I notice, Mr. Peacock, at the top of the article is a sketch that appeared on the front page of the Owosso Argus Press. Did they bring it with you?

A. They provided a sketch and they provided all the information that is in the article.

Q. Approximately how many days after they were in to see you was that article published?

A. I am not certain for sure; it was a matter of two or three days I would think. At the most, maybe four.

*Testimony of Joseph Peacock*

Q. All right. Now, in looking over that article, did the information that was contained in that article, was that provided to you by Mr. Goodrich and Mr. Newell when they were in conference with you?

A. Everything in this news story was provided by them, on this piece of paper, other than the lead, the first paragraph of the story. I wrote that after asking them the question of whether or not the Chippewa Mall would be a similar mall comparable to the Genesee Valley Mall in Flint. They said "Yes".

Q. All right. Mr. Peacock, if there were statements attributed to persons in this article, where did that attribution come from?

A. It came from them, from Newell and Goodrich.

Q. All right. What do you mean by "attribution"?

A. I mean if there is a statement, for example, I think it says that there were going to be thirty—

Q. I think it may be easier—would you select a particular paragraph of that particular article. Mr. Peacock and give an example of what is involved in "attribution"?

A. The third paragraph down "multi-million dollar community mall will be known as 'Chippewa Shopping Center' according to developer, J.M.H. Development Corporation." That was written on the release and—

Q. That was attributed to the corporation or a representative of the corporation?

A. I would say it was attributed to the corporation and Mr. Goodrich who was acting as the spokesman for J.M.H.

Q. Were there statements in that newspaper article that were attributed to Mr. Goodrich?

A. The third column, second paragraph: "Both Orr and Goodrich said it is planned that the mall will be owned by local citizens 100% assuring the shopping center will be home-owned rather than by outside interests."

The attribution to Orr came on that written statement, written, it is the statement "both Orr and Goodrich" and Goodrich, in my discussions with him, acknowledged that that was the truth.

*Testimony of Herbert A. Hasse*

## TESTIMONY OF HERBERT A. HASSE

Q. Now, first of all, I am going to, Mr. Hasse, have you look at Plaintiff's Exhibit 53 and ask you if that is the newspaper story that you have reference to?

A. Yes, this is the one I wrote, yes.

Q. And that is the newspaper story that you prepared as a news reporter?

A. Yes.

Q. All right. Now, when did you write that story, Mr. Hasse?

A. Well, probably between the hours of 7:00 a.m. and 11:00 a.m., on November 20, 1973.

Q. All right. And at the time what information or sources of information did you utilize in the preparation of that newspaper story?

A. I have been thinking about this, too. I had some background information from Detective Runyan prior to the story breaking. Now, since I knew about the story and did cover the Court on a daily basis, it is possible that I talked to the Shiawassee Prosecutor prior to that date. If there were any Court records, it is possible that I had seen them prior to this date and on that date, if I recall, I recalled Detective Runyan at the Sheriff's Department who verified other news reports he had heard. I covered the Court to find the disposition of the preliminary arraignment. I don't have my notes. I don't know what I—I believe they were destroyed when I left the paper.

Q. You did write a draft for that newspaper article, is that right, Mr. Hasse?

A. If I recall I had quite a few notes on it since it was over a period of time. You mean a predraft?

Q. Yes, or did you have a draft of the newspaper article on that day, November 20th?

A. Of this one, no, just my notes.

Q. All right. At that time you were working in the preparation of that newspaper article, were you aware, or

*Testimony of Herbert A. Hasse*

did you have access to Plaintiff's Exhibit—or, Defendant's Exhibit 61 which has been introduced into evidence?

A. Yes, I had read that.

Q. You read that article? What was that article, Mr. Haase?

A. It—that was an earlier article that appeared in the Argus Press—actually, it was a different article.

Q. Concerning the Chippewa Mall?

A. Yes, the Chippewa Mall Shopping Center.

Q. All right. I am going to show Defendant's Exhibit 69 and ask whether or not you recognize that?

A. This is a copy, yes, of an AP story that we had on the same day.

Q. All right. And did you have that AP story in front of you when you wrote your newspaper article?

A. Yes.

Q. And you had read it?

A. Yes.

Q. All right. Mr. Haase, when you had your story completed, what happened to the story that you had written in the course of preparation of the newspaper article? Well, it was completed?

A. Yes.

Q. Yes, when it was completed?

A. Well, I submitted it to the managing editor.

Q. On that day who was acting as managing editor of the newspaper?

A. Joe Peacock.

Q. So, you gave the story to him to be edited, is that right?

A. Yes.

Q. Did you see the story again after that time?

A. They returned it, yes. They returned it to our desks.

Q. They returned it to your desk? All right. Was there any changes made in the substance of the newspaper article as you wrote it in the course of editing by Mr. Peacock?

A. I honestly couldn't tell you. It looked the same, but it has been a long time.

*Testimony of Herbert A. Hasse*

Q. It has been long ago. Does look like the article that you wrote?

A. Yes. They may have polished it some.

Q. Your newspaper article, as it was published, the newspaper article and the one that was published in the newspaper as far as you can tell are exactly the same, is that correct?

A. Yes.

Q. And the basis are the sources of information that you previously described in your testimony?

A. Yes, and also, I believe I heard the radio station, WOAP.

Q. On the same day, the 20th?

A. It would have been the 20th, yes.

Q. All right. Now, the particular morning the person being charged under that criminal indictment, was in Court appearing in the arraignment, so you verified the fact that they appeared in District Court that morning as I understand your testimony?

A. Yes.

Q. And from that you were able to secure the amount of bond and the date for which the preliminary examination had been set?

A. Yes, also the list of charges, I suppose.

Q. At the time that you wrote the article was there any question in your mind about the accuracy or about the information that went into the newspaper article?

MR. KOBZA: I object to the question. It is invading the province of the jury.

THE COURT: Well, the Court will overrule the objection.

A. Would you ask the question again?

MR. DES JARDINS: I will rephrase the question.

Q. At the time that you wrote the article, the information that you had, did you have any reason to believe that that information,—let me withdraw the question and rephrase it. Did you have any reason to doubt the accuracy of any of the information contained in the newspaper article?

*Testimony of Ronald Rubach*

A. None.

Q. Did you have any reason to doubt any of the sources of information that you have disclosed to the jury and the Court here today concerning this information?

A. No.

Q. And went into the newspaper article?

A. No, I didn't.

**TESTIMONY OF RONALD RUBACH**

Q. All right, sir. And then did you conduct an investigation, that is, yourself?

A. Yes, sir. Beginning September 4 of 1973. I, Herb Runyan of the Shiawassee County Sheriff's Department and Detective Bart Park of the Michigan State Police again contacted Mrs. Walker and another subsequent investor and offeree that she had identified.

Q. How many investors did, or offerees, did Mrs. Phyllis Walker identify to you?

A. Twenty-eight or twenty-nine.

Q. Did you also indicate Newell Relaty, Bruce Newell?

A. Yes, sir.

Q. Did he inform you that he had also had some offerees or contacts?

A. Yes, sir. He identified between seven or eight but indicated that he thought there were more. He couldn't rule out that.

Q. Do I add that probably there were somewhere around thirty-seven offerees that these two gave you?

A. Yes.

**EXHIBIT (38)**

**RECEIVED AUGUST 1, 1973  
MICHIGAN DEPARTMENT  
OF COMMERCE  
SECURITIES BUREAU**

**PROPOSED  
CHIPPEWA MALL SHOPPING CENTER  
OWOSSO, MICHIGAN**

Prepared by:  
J.M.H. Development Corp.  
868 2nd St.  
Muskegon, Michigan



**PLAN FOR  
DEVELOPMENT, OWNERSHIP, & OPERATION  
OF PROPOSED  
CHIPPEWA MALL SHOPPING CENTER  
M-21  
OWOSSO-CORUNNA, MICHIGAN**

26 Stores (31 on projection)  
292,000 sq. ft. Enclosed Mall Shopping Center  
48 acres—2500 car parking  
Target for Opening: 1975-76

**LETTERHEAD OF J.M.H.  
DEVELOPMENT CORPORATION**

Muskegon Office  
Durham Building  
868 2nd Street  
Muskegon, Michigan 49440

This Company is primarily made up of a group of Professionals, who are associates of the Company, and as such each performs a specialized service, necessary to the accomplishment of a complete job of development (turn key job to "Owners") of a Mall Shopping Center.

i.e. associates—

Attorneys, Real Estate Broker, Economic Analyst, Real Estate Leasing, Mortgage Broker, Insurance Broker, Architects, Engineers, Contractors, Style & Design Decorator, Real Estate Appraiser, Accountant, Tax Counselor, Advertising and Operational Management.

The Development Corporation contracts with the Limited Partnership—Chippewa Mall Shopping Center, Shiawassee County, Michigan, for complete development, land acquisition, feasibility report, zoning when necessary, leasing, financing, construction and management, on a total contract fee basis.

The "Owner" entity, of Chippewa Mall Shopping Center, Shiawassee County, Michigan will be a Limited Partnership consisting of 25 units or shares at \$500 per unit.

### DEVELOPERS HISTORY

The Developer has been organized about three years, and was in-corporated, March 15, 1971.

No Shopping Center projects are as yet completed. Most retail stores plan their expansion program four to five years in advance. Developer has to meet their time table.

#### Shopping Centers in Process:

1. Muskegon, Michigan  
"Muskegon Metro Mall" . . Apple Ave.  
400,000 sq. ft.-36 stores . . Opening Scheduled: 1974-75
2. Superior, Wisconsin  
"Tower Mall" . . Tower Ave.  
230,000 sq. ft.-22 stores . . Opening Scheduled: 1974-75
3. Owosso-Corunna, Michigan  
"Chippewa Mall" . . Owosso, Michigan  
300,000 sq. ft.-26 stores . . Opening Scheduled: 1975-76
4. Battle Creek, Michigan  
M-66 Highway, Battle Creek  
350,000 sq. ft.-27 stores . . Opening Scheduled: 1976-77
5. Waukesha, Wisconsin  
Hill Side Mall. E. By Pass . . Waukesha.  
400,000 sq. ft.-32 stores . . Opening Scheduled: 1976-77

### MOTEL PROJECTS IN PROCESS

6. Muskegon, Michigan . . "Hilton"  
230 room-Convention Hi-Rise . . Scheduled: Late 1975-76
7. Duluth, Minn.  
100 Room-"Economy" . . Scheduled: 1975-76
8. Virginia, Minn. . . "Ramada" 100 room  
100 over-nite camping . . Scheduled: 1975
9. Milwaukee, Wisconsin  
50 Room "Economy"  
Air Port-Mitchel Field.

### CHIPPEWA LAND CORPORATION

(a proposed Michigan Corp.)

Owosso, Michigan

#### CAPITALIZATION:

2,500 Shares-Common Stock, par value \$100 each (25 blocks of 100 shares each)

#### PURPOSE:

Engage in real estate investments, acquire real properties, improve and/or develop real estate generally, and to trade, to own, sell, and/or dispose of real estate investments.

#### ORGANIZATION-SUBSCRIBERS:

Pre-Organization-offer . . . not to exceed 10 persons

Post-Organization-offer . . . not to exceed 15 persons

1. Corporation will purchase from J.M.H. Development Corporation a total of five parcels of land on M-21 Highway, 48 acres more or less, description attached. This real estate will be zoned commercial, shopping center, cleared to ground level, with utilities available at the site.

48 acres . . . price—\$690,000

\$100,000 within 30 days

\$100,000 within 90 days

\$440,000 within 2 years.

2. Corporation will (after acquisition of the real estate) give two years purchase option to

Chippewa Mall Shopping Center  
(a limited partnership)

at price paid by the Corporation—\$690,000. No profit to Corporation (Stockholders total investment is returned to treasurer).

3. The partnership to be organized, plan to construct an enclosed Mall type shopping center, as per plot plan (at-

tached) dated April 30, 1973 by L. S. Emmert & Associates, Architects, Elkhart, Indiana.

4. Members of the partnership, may be the stockholders of the Corporation whose contribution to partnership shall be \$500 for each share in the partnership.

5. Partnership shall contract with J.M.H. Development Corp., for a turn-key development of the enclosed climate controlled Mall Shopping Center. Consideration—6% fee, to be payable out of mortgage financing.

Pre-development to include:

- (a) Zoning for shopping center
- (b) Clearing of the land
- (c) Available utilities
- (d) Leasing of the stores
- (e) Mortgage financing
- (f) Architectural and engineering
- (g) Construction
- (h) Insurance
- (i) Management.

6. The General Partner: (Realtor proposed) may be the manager of the operation of the Shopping Center.

7. Proforma—projection (attached)

- 1. Number of stores proposed
- 2. Rental income projected
- 3. Cost of turn-key development estimate
- 4. Operation costs, and profit projected
- 5. Investors cash return, and tax shelter anticipated.

NOTE: The above projections are a guide line and/or a goal to follow and are *not* guaranteed representations.

8. Pre-development cash expense projection (attached). The funds for these required cash expenses are provided to J.M.H. Development from profits on sale of the land to Chippewa Land Corporation.

## CHIPPEWA MALL Owosso, Michigan

### PROJECTION

#### INCOME

1 Dept. Store	60,000 sq. ft. @ \$2.25	\$135,000
1 Dept. Store	60,000 sq. ft. @ \$2.25	135,000
1 Dept. Store	50,000 sq. ft. @ \$2.60	130,000
4 Stores @ 8,000 ft.	32,000 sq. ft. @ \$4.00	128,000
10 Stores @ 4,000 ft.	40,000 sq. ft. @ \$4.50	180,000
8 Stores @ 1,200 ft.	9,600 sq. ft. @ \$5.00	48,000
6 Stores @ 800 ft.	4,800 sq. ft. @ \$6.00	28,800
	<u>256,400 sq. ft.</u>	<u>\$784,800</u>
Commons 15%—	35,600	less 5% vacancy allowance
	<u>292,000</u>	<u>39,200</u>
		<u>\$745,600</u>

#### COST

Construction—292,000 sq. ft. @ \$12.00	\$3,500,000
Parking Lot—2,500 cars—26 acres. @ \$5,000	130,000
Architect 6%	210,000
Mtg. Fee 2%	100,000
Land Cost	690,000
Developer fee 6%	270,000
Contingency (Interest)	100,000
	<u>\$5,000,000</u>

Mortgage \$5,000,000

8¾%—25 yr.

(9.87) Debt service \$493,500

#### OPERATION

Debt Service—5 M—25 yr. 8¾% (Interest Only)	\$427,000
Principal Payment	
	67,500
Taxes & Insurance	100,000
Management—Labor	20,000
Replacement—reserve	43,000
Maintenance—Labor	24,000
Cash Flow	64,100
	<u>\$745,600</u>

**CHIPPEWA MALL LIMITED PARTNERSHIP****Earnings Projection**

Rent at full occupancy	\$784,800	
Less 5% vacancy allowance	<u>39,200</u>	\$745,600
<b>Expenses: Operation—1st year</b>		
Interest only—on debt service	\$427,000	
Taxes & Insurance	100,000	
Management—labor	20,000	
Maintenance—labor	<u>24,000</u>	<u>571,000</u>
Taxable Income (Cash flow)		\$174,600
Less Cash requirements		
(a) Mortgage principal payment	\$ 67,500	
(b) Replacement reserve	<u>43,000</u>	<u>110,500</u>
Cash flow—Net		\$ 64,100
Distribution available		\$ 64,100
1—Share—1/25 interest (cash)		\$ 2,564

**Depreciation**

Component "Schedule" Total annual allowance	\$295,800
150% acceleration (Declining Bal.)	<u>147,900</u>
1st full year operation	\$443,700
Less—Taxable income	<u>174,600</u>
Less: Cash flow—deficit	\$269,100
Allocate to partners	269,100
Deduction credit—1/25 Interest	\$ 10,764
Earnings assume 50% tax bracket	\$ 5,382
Cash distribution	<u>2,564</u>
Net earnings on 1/25 Interest	\$ 7,946

**NOTE:**

The above projection is a guide line or goal to seek, and is not guaranteed representation, the result could be more or less than the projection.

**SCHEDULE**

Component Depreciation—	Total Cost	\$5,000,000
	(Less Land)	4,300,000

	<u>Cost Breakdown Estimate</u>	<u>Life Expectancy</u>	<u>Allowance Annually</u>
Bldg.-shell (31%)	\$1,330,000	30 yr.	\$44,300
Heating & Ac (8%)	344,000	8 yr.	42,930
Ceiling-Interior (20%)	860,000	10 yr.	86,000
Lighting-parking lot (4%)	172,000	15 yr.	11,070
Fence & Signs (1%)	40,000	15 yr.	2,600
Paving-Utilities (10%)	430,000	10 yr.	43,000
Roof (4%)	172,000	15 yr.	11,500
Plumbing (10%)	430,000	15 yr.	28,600
Electrical (12%)	<u>516,000</u>	<u>20 yr.</u>	<u>25,800</u>
	<u>100%</u>		<u>\$295,800</u>



**PRE-DEVELOPMENT****24 Months**

Advertising	10,000
Printing	5,000
Miscellaneous office expense. (24 mo.) telephone, postage, supplies etc.	8,000
Legal, leasing 24 mo. @ \$1,000	24,000
Organization	10,000
Feasibility & Mortgage Application	10,000
Topo-survey-soil test	6,000
Leasing 2 men—24 mo. @ \$1,000	48,000
Legal—zoning—etc.	10,000
Architect & Engineer (2 yr.)	45,000
Travel Expense—24 mo. @ \$1,000	24,000
Land Clearing & Utilities	50,000
	<u>\$250,000</u>

**PARCELS OF LAND****(description)****48 acres more or less**

1. Sec 21 T7N R3E. Com at NW cor of sec 21 th S on W line of said sec to W 1/4 post Th E on 1/4 line of said sec 80 rds 11 ft th N on line par'l with W line of sec 73 rds th W par'l with N line of sec 603 ft th N par'l with W sec line 15 2/100 rds th W 24 rds on a line par'l with N sec line th N par'l with W sec line to N line of sec th W 20 rds to beg, except strip of land 900 ft along N & S of sec, *22-1/2 acres more or less.*

2. City of Corunna third ward farm property com 20 rds E of NW cor of NW 1/4 th E 24 rds to NW cor of land of E bold th S par'l with W sec line about 71 rds to cen of Caledonia drain th W alg cen of SD dr abt 24 rds to land owned by Flagg th N alg Flagg's E line about 71 rds to beg sec 21 T7N R3E. *12 acres more or less.*

3. City of Corunna third ward farm property W6 acres of 20 acres com at NE cor of W 1/2 of NW 1/4 th S 87 rds W 603 ft N to sec line E to beg Sec 21 T7N R3E, *5.6 acres more or less.*

4. City of Corunna third ward farm property W 5 acres of E 14 acres of NW 1/4 of NW 1/4 sec 21 T7N R3E, *5 acres more or less.*

5. City of Corunna third ward farm property W 2/3 of foll desc ld exc E 5 rds of sd W 2/3 viz: E 7/10 of foll com at NE cor of W 1/2 of NW 1/4 of sec th S 87 rds W 5 acres thereof. Sec 21 T7N R3E, *3 acres more or less.*



Lansing, Michigan

*To All To Whom These Presents Shall Come:*

*I, Richard K. Schulz, Director of the Michigan Department of Commerce, Do Herby Certify That* Cease and Desist Orders issued under the Michigan Uniform Securities Act, 1964 PA 265, as amended, are records in the custody of the Michigan Department of Commerce, Corporation and Securities Bureau.

I hereby certify that the attached Cease and Desist Order in the matter of Harlan E. Orr and JMH Development Corporation is a true and exact copy of the original.

EXH 59  
MAR 8 1978  
James E. Wysocki  
State Court Reporter

*In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department in the City of Lansing, this 5th day of January, 1978.*  
*Richard K. Schulz*  
Director

DEPARTMENT OF COMMERCE  
LETTERHEAD

ORDER

In the matter of  
HARLAN E. ORR  
and  
JMH DEVELOPMENT  
CORPORATION  
301 Liberty Life Building  
Muskegon, Michigan 49440  
(respondents)

TO CEASE AND DESIST  
AND  
REVOKING AND WITHDRAWING  
CERTAIN EXEMPTIONS

INASMUCH AS an investigation made by the Securities Bureau of the Michigan Department of Commerce, pursuant to Section 407 of Act 265 of the Public Acts of 1964, as amended, disclosed that the respondents, by advertisements made during May of 1971 in the Grand Rapids Press and during April and May of 1971 in the Muskegon Chronicle, offered for sale in Michigan \$5,000 units in which units have been included securities described as undivided interests in an option contract of JMH Development Corporation for purchase of land and property as well as 500 shares of Snowflake Shopping of Muskegon Inc., and

INASMUCH AS the respondents thus have been offering these securities in violation of Section 301 of the above mentioned Act in that the securities have not been and are not now registered in Michigan under the Act nor are they exempted by Section 402 of the Act from registration, in that the aforesaid \$5,000 units include the above mentioned option, a form of investment contract, which disqualifies the units for the exemption stated in 402(b)(10) of Act 265 of the Public Acts of 1964, as amended, and

INASMUCH AS the aforesaid units do not qualify for the exemption stated in Section 402(b)(9) of Act 265 of the Public Acts of 1964, in that the units were offered by means of a newspaper advertisement, and

INASMUCH AS the respondents have engaged in the above practices which are acts in violation of the Act and are about to engage in acts and practices constituting violations of the Act within the meaning of Section 408, and

INASMUCH AS the Bureau finds this action necessary and appropriate and in the public interest and for the protection of investors and consistent with the purposes intended by the policies and provisions of the Act,

IT IS THEREFORE ORDERED, pursuant to Section 408 of Act 265 of the Public Acts of 1964, as amended, that the above named respondents CEASE AND DESIST from engaging in activities in violation of and without complying with the provisions of said Act, and

IT IS FURTHER ORDERED, pursuant to Section 402(c) of the Act, that for the reasons set forth above, the exemptions in Clause 10 of Section 402(b) of the Act and the exemptions in Clause 8 Section 402(b) of the Act be and are hereby SUMMARILY WITHDRAWN AND REVOKED as to the respondents with respect to the above mentioned securities and any other securities of JMH Development Corporation, and

IT IS FURTHER ORDERED, that if the respondents request a hearing within 15 days of this Order then within 15 days after receipt by the Department of such a request in writing the matter will be set down for a hearing; that if a hearing is requested or ordered and is held, the Department shall make a determination and enter a further Order; that if no hearing as specified above is requested and none is

ordered by the Department, then, unless modified or vacated by the Department, this Order will remain in effect.

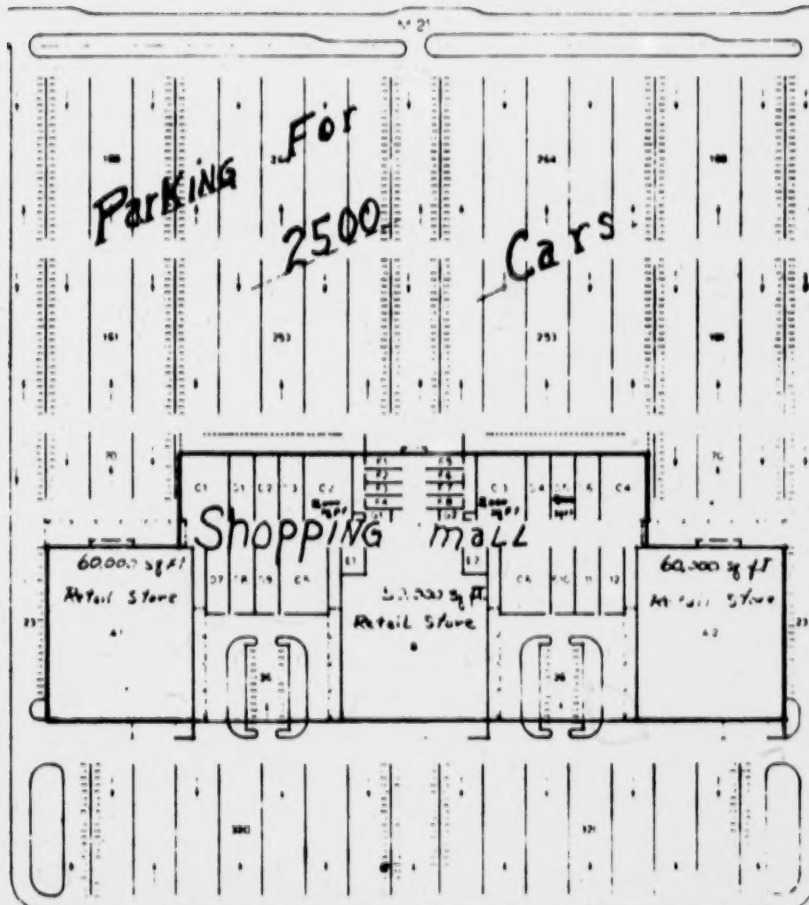
MICHIGAN DEPARTMENT OF COMMERCE  
Richard E. Whitmer, Director

By: /s/ ERIC J. SCHNEIDEWIND  
*Examining Attorney*  
Securities Bureau

Dated: October 22, 1971  
Lansing, Michigan

(A copy of this Order is being sent by Certified Mail to the respondents)

## CHIPPEWA MALL SHOPPING CENTER



**CHIPPEWA MALL SKETCH**—Preliminary sketch plans for a community shopping mall to be developed by a Muskegon firm have

been released. It will contain 30 stores and is to be located on east M 21. It is scheduled to open in 1976.

## 30 Stores

# Community Shopping Mall Planned for Shiawassee

A new, temperature-controlled enclosed shopping mall, similar to the Genesee Valley Mall in Flint, is being planned for Shiawassee County.

It will be erected on east M-21, east of the Pines Restaurant, and is scheduled for opening in 1976.

The multi-million dollar community mall will be known as the "Chippewa Mall Shopping Center," according to the developer, J.M.H. Development Corp.

Harlan Orr is the president of the corporation which is headquartered in Muskegon.

The land for the proposed mall, consisting of 48 acres, with a 1,200 foot frontage on M-21, was acquired by Bruce Newell, real estate broker, located at 440 Corunna Ave.

Merlin Goodrich, who is associated with J.M.H., said the floor plan is designed to cover 300,000 square feet of store leasing area with another 40,000 square feet which will house The Commons.

The 340,000 square foot area, all under one roof, covers approximately eight acres. The floor plan was prepared by L.S. Emmert and Associates, architects, of Elkhart, Ind.

Three anchor stores will be flanked by 27 additional complementary retail stores which will provide complete retail services, according to Goodrich. Parking will be provided for 2,500 cars.

Orr said a tenant list will be announced later, but that much of the rental space has already been committed, and that all of

the tenants will be newcomers to Shiawassee County.

He said Newell Real Estate will be the local contractor for the pre-leasing of store space.

Both Orr and Goodrich said it is planned that the mall will be owned by local citizens 100 percent thus assuring the shopping center will be home owned rather than by outside interests.

Goodrich is a former Oshtemo resident and is the son of Mr. and Mrs. Neil Goodrich of Corunna Ave.

Newell said the concept of an enclosed community mall shopping center for this area is setting a good reception from many local people and will provide the vehicle to keep many retail dollars within the Shiawassee County community.



k017

## Mall-Fraud

Prosecutor Ray Basso alleged the two approached local persons last summer, asking them to become investors in the Chippewa Mall Land Co.

The prosecutor said the pair used misrepresentation in claiming the J.C. Penney Co. had signed a lease for space in the proposed 30-store mall. Penney has signed no such lease, according to Basso.

Basso said at least 10 persons and two real estate firms have given statements implicating the pair, who are being held in Shiawassee County Jail.

He added the pair would be charged with at least 15 counts of obtaining money under false pretenses as well as violation of the Michigan Uniform Security Law for allegedly selling unregistered stocks.

11-19-73 07.05pcs

Defr EXH. 69  
MAR 10 1976  
James E. Wyszynski  
Official Court Reporter  
U. S. District Court